

1 STATE OF SOUTH CAROLINA )

2 COUNTY OF RICHLAND )

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JUDICIAL MERIT SELECTION COMMISSION

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TRANSCRIPT OF PUBLIC HEARINGS

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8

BEFORE: G. MURRELL SMITH, JR., CHAIRMAN

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SENATOR LUKE A. RANKIN

10

SENATOR RONNIE A. SABB

11

SENATOR TOM YOUNG, JR.

12

ROBERT W. HAYES, JR.

13

REPRESENTATIVE J. TODD RUTHERFORD

14

REPRESENTATIVE CHRIS MURPHY

15

MICHAEL HITCHCOCK

16

JOSHUA HOWARD

17

ANDREW N. SAFRAN

18

ERIN B. CRAWFORD, CHIEF COUNSEL

19

\* \* \* \* \*

20

DATE: December 5th, 2017

21

TIME: 12:00 p.m.

22

LOCATION: Gressette Building

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1101 Pendleton Street

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Columbia, South Carolina 29201

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REPORTED BY: PATRICIA G. BACHAND, COURT REPORTER

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(No Information Requested.)

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- INVITATION AND ATTACHED ENVELOPE

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Court Reporter's Legend:

dashes [--] Intentional or purposeful interruption

... Indicates trailing off

[sic] Written as said

1                   CHAIRMAN SMITH: We're coming out of  
2 executive session, and we're going to -- Mr. Safran moves  
3 that we move to James Morton. And we're going to move to  
4 that portion of the hearing right now.

5                   Mr. Morton, good afternoon.

6                   MR. MORTON: Yes, sir. Good afternoon to  
7 y'all.

8                   CHAIRMAN SMITH: And I understand you're  
9 sick, and I apologize for this in having to bring you out.  
10 But we're here today and it's -- we're past our allotted  
11 two weeks, so we're trying to -- we're trying to bring all  
12 this to conclusion.

13                   MR. MORTON: Yes, sir. And I appreciate it.  
14 I'm fine. Thank you so much.

15                   CHAIRMAN SMITH: Thank you. I hope you're  
16 feeling better. You have the sniffles, I see.

17                   MR. MORTON: I'm fine. Thank you so much.

18                   CHAIRMAN SMITH: Mr. Morton, you're under  
19 oath.

20                   MR. MORTON: Yes, sir.

21                   CHAIRMAN SMITH: You agree that you're still  
22 under oath --

23                   MR. MORTON: Yes, sir.

24                   CHAIRMAN SMITH: -- from the first hearing?

25                   MR. MORTON: Yes, sir.

1                   CHAIRMAN SMITH: All right. Mr. Morton, we  
2 brought you back concerning an anonymous letter that came  
3 to our -- came to our attention this week. And so it -- we  
4 need to explore that with you, in past precedence with this  
5 commission.

6                   And so, you know, I just -- for the record,  
7 I want you to know that this is, obviously, not something  
8 any of us enjoy. But it was brought to our attention, and  
9 we have to react to it, okay?

10                  MR. MORTON: I understand. Yes, sir.

11                  CHAIRMAN SMITH: All right. Thank you.  
12 Thank you very much. Answer any questions that Mr.  
13 Maldonado may have for you, please, sir.

14                  MR. MORTON: Yes, sir.

15                  MR. MALDONADO: Good afternoon, Mr. Morton.

16                  MR. MORTON: Yes, sir.

17                  MR. MALDONADO: Just to be clear: Before the  
18 application, were you aware of the code -- the judicial  
19 ethics pertaining to your candidacy today?

20                  MR. MORTON: Yes, sir.

21                  MR. MALDONADO: Did you review that before  
22 your candidacy -- or during your candidacy, before this  
23 hearing, today, at any time?

24                  MR. MORTON: Yes, sir.

25                  MR. MALDONADO: Are you aware that the

1 Canon 5 which prohibits political activity by judicial  
2 candidates?

3 MR. MORTON: Yes, sir. I presumed that I  
4 was aware.

5 (Off-the-record discussion.)

6 MR. MALDONADO: Did you have any  
7 participation in a political event for Archie Parnell on  
8 November the 9th?

9 MR. MORTON: I did.

10 MR. MALDONADO: Can you describe the  
11 circumstances surrounding that?

12 MR. MORTON: Archie Parnell called me and --  
13 I'm not sure when it was. But he called me and asked me if  
14 I would agree to be a host for a party for him, coming up  
15 in -- I'm not sure when he called. I presume it was after  
16 I had filed.

17 Because it would not have been -- I think  
18 filing was July 31st, if I remember correctly, or sometime  
19 in July. And quite honestly, I don't think he would have  
20 called me before that, because he had just run a race. But  
21 he called and said, "Would you agree to be a host?"

22 And I said, "Well, sure. I'm not -- I can't  
23 give you any money right now."

24 And he said, "Oh, no, no, no. That's fine.  
25 It's just a little thing."

1                   And I didn't know at the time, whether it  
2 was, you know, eight people agreeing to be a host or 30  
3 people, or however many. And it was at a -- at a friend's  
4 house. And frankly, I -- I said, "Yes, I'll be glad to do  
5 that."

6                   And I forgot about it. My partner at the  
7 time was running for mayor, and I had been involved in that  
8 campaign, too, as it was a non-partisan race. And to be  
9 honest with you, I forgot that we were even having  
10 something for Archie.

11                   And he called -- or somebody from his  
12 campaign called and said, "Could he come by and meet some  
13 of your attorneys?"

14                   And I said, "Sure. Absolutely." And he  
15 came by that day, and I spoke to him and introduced him to  
16 a couple people.

17                   And then I went to the thing that night, I  
18 didn't -- I didn't even talk to him at the -- at the event.  
19 It wasn't -- I don't -- it wasn't a fundraiser. I took it  
20 as kind of a thank you for the last campaign, and he was  
21 kind of getting out early to let people know that he was  
22 going to probably run again for a congressional seat.

23                   So that was -- that was my involvement. My  
24 wife and I were listed as hosts on the invitation. It did  
25 not occur to me at the time, frankly, that it was something

1 that was prohibited. I had not been reported out at the  
2 time. If I have any excuse, or any attempt to make you  
3 understand, I -- I didn't think of myself at that time as a  
4 -- as a candidate.

5 I guess I thought of myself as a prospective  
6 candidate or a nominee. Until Ms. Crawford called me last  
7 night, it never -- it never even occurred to me.

8 MR. MALDONADO: What was your understanding  
9 of the purpose of the event?

10 MR. MORTON: My understanding of the purpose  
11 of the event was, it was an attempt by him to let people  
12 know that he was considering running again, and kind of as  
13 a "thank you" for the last campaign that he had just  
14 finished a couple of months before. Again, I never spoke.  
15 I never spoke with him.

16 CHAIRMAN SMITH: Let me stop you here.

17 MR. MORTON: Yes, sir.

18 CHAIRMAN SMITH: I think there's marked as  
19 an exhibit, a copy of the invitation that's before you.  
20 And it probably would help you to review that invitation --

21 MR. MORTON: Yes, sir.

22 CHAIRMAN SMITH: -- before we continue  
23 speaking.

24 MR. MORTON: Yes, sir.

25 CHAIRMAN SMITH: 'Cause that will make it

1 clear as to what the purpose of this event was.

2 MR. MORTON: Okay. Yes, sir, it was a  
3 fundraiser, asking people to contribute. But again, to me  
4 -- I never asked anybody for any money on his behalf. I  
5 told him, clearly, up front when he called me, when he  
6 asked me to be a host, I said, "I can't contribute  
7 anything. If it entails me contributing money to be a  
8 host, then I can't do it."

9 And he said, "Oh, no, no. It's just a  
10 little party." So I really never paid a whole lot of  
11 attention to the invitation, myself. But it clearly says  
12 on here it's a -- it was a -- asking for contributions for  
13 Mr. Parnell.

14 MR. MALDONADO: Did you know before the --  
15 before going to the event, that Mr. Parnell was running for  
16 Congress?

17 MR. MORTON: Again, I had been involved --  
18 my partner was running for mayor -- and I don't know if I  
19 should even have been doing that, either, but I was. And  
20 he had -- his election was October 17th, and they had a  
21 runoff on October 31st.

22 I knew that Archie was interested in running  
23 for the 5th Congressional District again. I don't recall  
24 knowing what stage that was in, or whether he had  
25 announced. I don't think filing had occurred. I don't

1 know what his stated announcement or anything was, that I  
2 recall. But clearly, it was a political event.

3 MR. MALDONADO: Did you have any other --  
4 did you attend any other events for -- for any other  
5 political candidates?

6 MR. MORTON: Well, I told Ms. Crawford, last  
7 night, that -- that I had also been asked to meet James  
8 Smith for a luncheon -- and I think that was before being  
9 reported out as well -- and I agreed to do that.

10 The host said, "Would you mind calling some  
11 people to come to a lunch for James Smith?"

12 And I said, "Sure. I'll be glad to do  
13 that." And I did that. And I went to a lunch, with about  
14 30 other people, with him. And, again, that was just a  
15 couple of days before my appearance before this commission.

16 MR. MALDONADO: So November?

17 MR. MORTON: I'm sorry?

18 MR. MALDONADO: Was that in November of this  
19 year?

20 MR. MORTON: That was in November -- going  
21 back after y'all called, it was November, I believe, the --  
22 I think -- I think it was the 11th, I think. Archie's  
23 thing was the 9th, I was campaigned out. It was a mistake  
24 on my part, clearly, something that was just not on my  
25 radar.

1 I wish I had given it more though, 'cause it  
2 would have been something that I could have gotten out of,  
3 frankly.

4 MR. MALDONADO: I have no further questions.

5 CHAIRMAN SMITH: Mr. Morton, when you  
6 mentioned your law partner, I know that puts you in a  
7 untenable situation: your law partner's running for office  
8 and you're his partner. And I expect my partners to help  
9 me when I'm in political office. And I'm sure it's the  
10 same.

11 But I've got to ask you this question,  
12 'cause I'm reading the rule -- Canon 5(a)(1) of the Rules  
13 of Judicial Conduct. And it talks about the candidate  
14 shall refrain from inappropriate political activity. And  
15 one of them is publically endorse or publically oppose  
16 another candidate for public office. Did you publically  
17 endorse Mr. Gettys for his bid for mayor?

18 MR. MORTON: I'm not sure how you -- and I'm  
19 not trying to be squeamish on publically endorsing. Nobody  
20 asked me in the paper, or in the news, if I'd publically  
21 endorsed me. But I clearly would -- I clearly was  
22 supporting him. I've knocked on doors. I held an event at  
23 my house. I attended events.

24 CHAIRMAN SMITH: Was all that after the time  
25 to which you picked up your --

1 MR. MORTON: It was after the time --

2 CHAIRMAN SMITH: -- application?

3 MR. MORTON: Yes, sir. It was after --

4 CHAIRMAN SMITH: You knocked on doors  
5 afterwards, and urged voters to consider Mr. Gettys?

6 MR. MORTON: Yes, sir.

7 CHAIRMAN SMITH: Okay.

8 MR. MORTON: Yes, sir. And it was a -- I  
9 don't -- I don't think this matters, it was a non-partisan  
10 office. And, again, my only excuse -- and I know it's --  
11 it's not a -- may not be considered a good one, but it  
12 never occurred to me.

13 Because I had not been reported out, and  
14 I've done this before. I think I would have -- had I been  
15 reported out, maybe I would have acted differently. But it  
16 never -- you know, it never occurred to me, frankly.

17 CHAIRMAN SMITH: If it makes you feel any  
18 better, my friend, Representative Simrill, also supported  
19 Mr. Gettys.

20 MR. MORTON: Yes, sir.

21 CHAIRMAN SMITH: So it can't be a partisan  
22 thing, 'cause --

23 MR. MORTON: No.

24 CHAIRMAN SMITH: -- I think the Democrats  
25 and Republicans are united on that one.

1 MR. MORTON: Yes, sir. They did. And they  
2 came and -- came out in support of Mr. Gettys. And I was  
3 there at the press conferences, I was -- I was clearly  
4 supporting him, and doing everything I could.

5 CHAIRMAN SMITH: And as I told you from the  
6 beginning, you understand that when you picked up a packet  
7 --

8 MR. MORTON: Yes, sir.

9 CHAIRMAN SMITH: -- you agree to be bound by  
10 the judicial canons --

11 MR. MORTON: Yes, sir.

12 CHAIRMAN SMITH: -- of ethics.

13 MR. MORTON: Yes, sir.

14 CHAIRMAN SMITH: And so, obviously, you  
15 know, I would presume you would agree with us, me and my  
16 characterization of it, that this Archie Parnell fundraiser  
17 would probably fit the definition of a political gathering,  
18 as people who are gathering together.

19 MR. MORTON: No question about it.

20 CHAIRMAN SMITH: And then going to James  
21 Smith governor's, would also be -- fall in the definition  
22 of a political gathering.

23 MR. MORTON: There's no question about it.  
24 Yes, sir.

25 CHAIRMAN SMITH: Well, Mr. Morton, I'll see

1 if there are any other questions, but I appreciate your  
2 forthrightness in this. We've been through this before,  
3 unfortunately, as a commission. And so, you know, we have  
4 to ask these questions.

5 MR. MORTON: Yes, sir.

6 CHAIRMAN SMITH: And we have some precedence  
7 that we probably have to follow here. And we'll -- we'll  
8 talk about that in a little bit.

9 MR. MORTON: Yes, sir. I appreciate it.

10 CHAIRMAN SMITH: And so, but I appreciate  
11 you, obviously, recognizing these problems. And, again, I  
12 just -- I just want to explain that when we sign these, and  
13 that's why we get the candidates to agree to be bound by  
14 the judicial canons of ethics, 'cause we've got to weigh --

15 MR. MORTON: Yes, sir.

16 CHAIRMAN SMITH: -- judges and --

17 MR. MORTON: Yes, sir.

18 CHAIRMAN SMITH: -- people are held by the  
19 same standard. And so that's kind of --

20 MR. MORTON: Yes, sir.

21 CHAIRMAN SMITH: -- why this occurs.

22 MR. MORTON: Yes, sir. Again, and my only  
23 defense is that I had not been reported out, I wasn't  
24 really thinking of myself as a judicial candidate at the  
25 time. I was doing this stuff, I never talked to anybody,

1 I've never asked anybody for -- you know, any support. I  
2 never brought it up to anybody. It just wasn't -- it just  
3 wasn't on my radar, before I got reported out. So I  
4 apologize.

5 CHAIRMAN SMITH: If it makes you feel any  
6 better, nobody reported you when the event occurred; they  
7 reported you after you got reported out. Which obviously  
8 brought this to the Commission's attention, so --

9 MR. MORTON: Yes, sir.

10 CHAIRMAN SMITH: We're going to mark this as  
11 an exhibit, please, sir. Do you have any objection to us  
12 marking this as an exhibit to your sworn testimony?

13 MR. MORTON: No, sir.

14 CHAIRMAN SMITH: And that's the original  
15 copy of what we received, along with the envelope.

16 (EXHIBIT NO. 1 - INVITATION AND ATTACHED  
17 ENVELOPE)

18 CHAIRMAN SMITH: All right. Without  
19 objection, we'll make that a part of your sworn testimony.  
20 Any other questions for Mr. Morton? Senator Hayes.

21 MR. HAYES: I just wanted to -- just more a  
22 way -- by way of a statement, I've been -- known Mr.  
23 Morton for many, many years. I practiced law with him,  
24 over the years. I've been involved on the same side and on  
25 different sides on political issues, etc.

1                   And he is extremely well thought of in our  
2 community, and he is of the highest moral integrity. And I  
3 believe his testimony today is accurate. He -- had he  
4 realized that this was a violation of the canons of ethics,

5                   I'm confident he would not have done it.  
6 That's no excuse, not realizing -- I realize. But it's the  
7 truth. And I have no doubt in my mind, that what he's  
8 saying is absolutely true. I just wanted, for the record,  
9 to point that out, that he -- he has before, and still has,  
10 my highest, you know, admiration in that regard.

11                   CHAIRMAN SMITH: Thank you Senator Hayes.  
12 Any other questions of the Commission members?

13                   (Hearing none.)

14                   CHAIRMAN SMITH: All right. Mr. Morton,  
15 anything else you wish to tell the Commission?

16                   MR. MORTON: No, sir. Thank you very much.

17                   CHAIRMAN SMITH: Thank you. And, again,  
18 sorry we have to bring you up. If you'll -- if you'll just  
19 give us a couple minutes, we'll go into executive session  
20 and then we'll be back in contact. If you'll go back where  
21 you were, and we're going to go into executive session and  
22 get some legal advice. And then we'll come back out --

23                   MR. MORTON: Thank you, sir.

24                   CHAIRMAN SMITH: -- and proceed. Thank you.  
25 Senator Sabb moves we go into executive session. All in

1 favor say "aye."

2 (At this time the members audibly say "aye.")

3 CHAIRMAN SMITH: All opposed?

4 (Hearing none.)

5 CHAIRMAN SMITH: The ayes have it. We stand  
6 in executive session.

7 (Off the record at 4:52 p.m. to 5:45 p.m.)

8 CHAIRMAN SMITH: We've come back out of  
9 executive session. And let me state -- Mr. Safran moves  
10 that we lift the veil. Seconded by Senator Hayes. And all  
11 those in favor say "aye."

12 (At this time the members audibly say "aye.")

13 CHAIRMAN SMITH: All opposed?

14 (Hearing none.)

15 CHAIRMAN SMITH: The ayes have it. And  
16 we're out of executive session. Let me say, while we were  
17 in executive session no votes have been taken and nothing's  
18 been decided.

19 All right. We're back to -- we've got James  
20 Morton, Circuit Court 16th Seat No. 1. Are there any  
21 motions?

22 REPRESENTATIVE MURPHY: I move to reconsider  
23 the vote where he was found to be nominated.

24 CHAIRMAN SMITH: Found to be qualified and  
25 nominated.

1 REPRESENTATIVE MURPHY: Qualified and  
2 nominated. Okay.

3 CHAIRMAN SMITH: Okay. Any seconds to that  
4 motion?

5 SENATOR SABB: I second it.

6 CHAIRMAN SMITH: Senator Sabb seconds. So  
7 Representative Murphy moves that we reconsider the vote of  
8 James Morton as a candidate for Circuit Court 16th Circuit  
9 Seat 1. And it's seconded by Senator Sabb. Any  
10 discussion?

11 (Hearing none.)

12 CHAIRMAN SMITH: All in favor of  
13 reconsidering a vote, please raise your hand.

14 (The Commission members cast their vote.)

15 CHAIRMAN SMITH: And let the record reflect  
16 that Representative Rutherford votes "aye." So that would  
17 make it unanimous; is that correct? All right. So what  
18 happens here, guys, is we obviously are voting on the three  
19 remaining candidates in here.

20 I guess we've go to make a determination of  
21 whether Mr. Morton is qualified. That first has to be to  
22 vote before we can ballot -- go to ballot. Mr. Safran.

23 MR. SAFRAN: I move to find him qualified.

24 CHAIRMAN SMITH: All right. Mr. Safran  
25 moves to find him qualified. Mr. Howard seconds that. Any

1 discussion on finding him qualified?

2 (Hearing none.)

3 CHAIRMAN SMITH: All in favor of finding Mr.  
4 Morton qualified, please raise your right hand.

5 (The Commission members cast their vote.)

6 CHAIRMAN SMITH: All opposed to Mr. Morton  
7 being found qualified, raise your hand.

8 (The Commission members cast their vote.)

9 CHAIRMAN SMITH: And so let the record  
10 reflect that -- Representative Rutherford moves to find him  
11 qualified by proxy. So let the record reflect the vote is  
12 nine finding qualified, and none -- and there's one that  
13 did not vote.

14 All right. So we proceed to ballot. Erin,  
15 if you'll call the ballot. And you only have one vote  
16 among the candidates.

17 MS. CRAWFORD: Mr. Chairman, Lisa G.  
18 Collins.

19 (The Commission members cast their vote.)

20 MS. CRAWFORD: Lea B. Moody.

21 (The Commission members cast their vote.)

22 CHAIRMAN SMITH: Let the record reflect that  
23 the proxy of Representative Rutherford is for Lea Moody.

24 MS. CRAWFORD: James Michael Morton.

25 (The Commission members cast their vote.)

1                   CHAIRMAN SMITH: There are no votes for Mr.  
2 Morton?

3                   MS. CRAWFORD: Mr. Chairman, Lisa Collins  
4 having received seven votes, is qualified and nominated.

5                   CHAIRMAN SMITH: All right. Any other  
6 business before the Commission?

7                                   (Hearing none.)

8                   CHAIRMAN SMITH: All right. Guys, let me  
9 thank you again. When you signed up for this for the new  
10 people, or you were dragged into this, no one realized that  
11 it was going to take two and a half weeks of your life.  
12 But it did. I thank you for your hard work.

13                                   But more importantly, to the staff around  
14 here, let me thank y'all for what y'all did. We couldn't  
15 do it without you. So I thank all of y'all for what you've  
16 done, all of the staff, in putting up with us for two and a  
17 half weeks.

18                                   After we -- after we adjourn here, guys, if  
19 y'all could do this for us: we want to improve the process,  
20 we need to learn what worked here and what didn't work  
21 here. And I would suggest you just write down notes. I've  
22 been telling Erin, throughout the process, things that we  
23 need to change.

24                                   I obviously know right now, one thing we  
25 need to change is we need to make it explicitly clear when

1 they pick up a packet, that they agree to be bound by the  
2 code of judicial conduct, the canons of judicial conduct.  
3 So we need to make sure we do that in the future.

4 But anything that y'all think of when we can  
5 improve the process, I'm sure our incoming chairman,  
6 Senator Rankin, would love to hear from you. Please blow  
7 up his phone and give him as many suggestions so he'll have  
8 to work throughout this whole process to be chairman of  
9 this commission.

10 REPRESENTATIVE MURPHY: Murrell, will we be  
11 talking about doing -- do we need, before the end of the  
12 session, to discuss rule changes?

13 SENATOR RANKIN: A real quick interruption.  
14 Can we adjourn so this nice court reporter --

15 CHAIRMAN SMITH: Yes.

16 SENATOR RANKIN: -- can pack up and leave?

17 CHAIRMAN SMITH: So with that being said,  
18 Representative Murphy moves that we adjourn. All in favor  
19 say "aye."

20 (At this time the members audibly say "aye.")

21 CHAIRMAN SMITH: All opposed?

22 (Hearing none.)

23 CHAIRMAN SMITH: The ayes have it. We stand  
24 adjourned.

25 SENATOR RANKIN: I want to commend Murrell,

1 Representative Smith, and our entire JMSC effort here.  
2 It's new to me and new to a number of us. And this has  
3 been -- certainly, as Todd Rutherford said earlier, far  
4 more demanding, far more taxing than I ever thought. So  
5 kudos to you. You've run a fine, smooth, mostly seamless  
6 process. And for the -- I did order lunch ahead and  
7 everybody took their turn, so that made for efficient work.  
8 My kudos to you.

9 CHAIRMAN SMITH: Thank you, Mr. Vice  
10 Chairman. And I look forward to that. Now the Vice  
11 Chairman moves that we adjourn. All in favor say "aye."  
12 (At this time the members audibly say "aye.")

13 CHAIRMAN SMITH: All opposed?  
14 (Hearing none.)

15 CHAIRMAN SMITH: The ayes have it. We stand  
16 adjourned, guys.

17 (OFF THE RECORD AT 5:52 P.M.)  
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CERTIFICATE OF REPORTER

I, PATRICIA G. BACHAND, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT CONSISTING OF 21 PAGES IS A TRUE, ACCURATE, AND COMPLETE RECORD TO THE BEST OF MY SKILL AND ABILITY.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 12TH DAY OF DECEMBER 2017.

---

PATRICIA G. BACHAND, COURT REPORTER  
MY COMMISSION EXPIRES MARCH 8, 2027